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6 **BEFORE THE**
7 **BOARD OF REGISTERED NURSING**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2011-745

11 **MARCELA CHAMBERT KLEMENTICH,**
12 **aka MARCELA V. CHAMBERT**
13 **2566 N. Rowen Circle**
14 **Mesa, AZ 85207**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

15 **Registered Nurse License No. 405857**

16 Respondent.

17
18 **FINDINGS OF FACT**

19 1. On or about March 4, 2011, Complainant Louise R. Bailey, M.Ed., RN, in her official
20 capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer
21 Affairs, filed Accusation No. 2011-745 against Marcela Chambert Klementich, aka Marcela V.
22 Chambert ("Respondent") before the Board of Registered Nursing. (Accusation attached as
23 Exhibit A.)

24 2. On or about September 30, 1986, the Board of Registered Nursing ("Board") issued
25 Registered Nurse License No. 405857 to Respondent. The Registered Nurse License was in full
26 force and effect at all times relevant to the charges brought herein and will expire on March 31,
27 2012, unless renewed.

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1 3. On or about March 4, 2011, Respondent was served by Certified and First Class Mail
2 copies of the Accusation No. 2011-745, Statement to Respondent, Notice of Defense, Request for
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
4 Respondent's address of record which, pursuant to California Code of Regulations, title 16,
5 section 1409.1, is required to be reported and maintained with the Board, which was and is:
6 2566 N. Rowen Circle
7 Mesa, AZ 85207.

8 4. Service of the Accusation was effective as a matter of law under the provisions of
9 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
10 124.

11 5. On or about March 29, 2011, the aforementioned documents were returned by the
12 U.S. Postal Service marked "Not Deliverable as Addressed - Unable to Forward." The address on
13 the documents was the same as the address on file with the Board. Respondent failed to maintain
14 an updated address with the Board and the Board has made attempts to serve the Respondent at
15 the address on file. Respondent has not made herself available for service and therefore, has not
16 availed herself of her right to file a notice of defense and appear at hearing.

17 6. Government Code section 11506 states, in pertinent part:

18 (c) The respondent shall be entitled to a hearing on the merits if the respondent
19 files a notice of defense, and the notice shall be deemed a specific denial of all parts
20 of the accusation not expressly admitted. Failure to file a notice of defense shall
21 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
22 may nevertheless grant a hearing.

23 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
24 the Accusation, and therefore waived her right to a hearing on the merits of Accusation
25 No. 2011-745.

26 8. California Government Code section 11520 states, in pertinent part:

27 (a) If the respondent either fails to file a notice of defense or to appear at the
28 hearing, the agency may take action based upon the respondent's express admissions
or upon other evidence and affidavits may be used as evidence without any notice to
respondent.

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9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 2011-745, finds that the charges and allegations in Accusation No. 2011-745, are separately and severally, found to be true and correct by clear and convincing evidence.

10. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$4,637.50 as of April 21, 2011.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Marcela Chambert Klementich, aka Marcela V. Chambert has subjected her Registered Nurse License No. 405857 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Registered Nursing is authorized to revoke Respondent's Registered Nurse License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case.:

a. Conviction of a substantially related crime, to wit, violating California Penal Code section 23152, subdivision (b) [Driving with a Blood Alcohol Content of .08% or more].

b. Conviction involving drugs/alcohol, to wit, violating California Penal Code section 23152, subdivision (b) [Driving with a Blood Alcohol Content of .08% or more].

c. Dangerous use of controlled substances/alcohol, to wit, alcohol.

d. Unprofessional conduct, to wit, driving with a blood alcohol content of .08% or more.

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ORDER

IT IS SO ORDERED that Registered Nurse License No. 405857, heretofore issued to Respondent Marcela Chambert Klementich, aka Marcela V. Chambert, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on August 12, 2011.

It is so ORDERED July 13, 2011

Jeanine K. Plaves

FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

60618860.DOC
DOJ Matter ID: LA2010600946

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No.

2011-745

MARCELA CHAMBERT KLEMENTICH
aka MARCELA V. CHAMBERT
2566 N. Rowen Circle
Mesa, AZ, 85207

ACCUSATION

Registered Nurse License No. 405857

Respondent.

Complainant alleges:

PARTIES

1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs (Board).

2. On or about September 30, 1986, the Board issued Registered Nurse License No. 405857 to Marcela Chambert Klementich, aka Marcela V. Chambert, (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2012, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 118, subdivision (b), provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 490 provides that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

6. Section 2750 provides that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

7. Section 2764 provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b), the Board may renew an expired license at any time within eight (8) years after the expiration.

8. Section 2761 states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

"(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

....

"(f) Conviction of a felony or of any offense substantially related to the qualifications,

1 functions, and duties of a registered nurse, in which event the record of the conviction shall be
2 conclusive evidence thereof. . . ."

3 9. Section 2762 states, in pertinent part:

4 "In addition to other acts constituting unprofessional conduct within the meaning of this
5 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
6 chapter to do any of the following:

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8 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
9 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
10 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
11 himself or herself, any other person, or the public or to the extent that such use impairs his or her
12 ability to conduct with safety to the public the practice authorized by his or her license.

13 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
14 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
15 or the possession of, or falsification of a record pertaining to, the substances described in
16 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
17 thereof."

18 REGULATORY PROVISIONS

19 10. California Code of Regulations, title 16, section 1444 states, in pertinent part:

20 "A conviction or act shall be considered to be substantially related to the qualifications,
21 functions or duties of a registered nurse if to a substantial degree it evidences the present or
22 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
23 safety, or welfare."

24 COST RECOVERY

25 11. Section 125.3 provides, in pertinent part, that the Board may request the
26 administrative law judge to direct a licensee found to have committed a violation or violations of
27 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
28 enforcement of the case.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of A Substantially Related Crime)**

3 12. Respondent is subject to disciplinary action under sections 490 and 2761, subdivision
4 (f), in conjunction with California Code of Regulations, title 16, section 1444, on the grounds of
5 unprofessional conduct, in that Respondent was convicted of crimes substantially related to the
6 qualifications, functions or duties of a registered nurse which to a substantial degree evidence her
7 present and/or potential unfitness to practice in a manner consistent with the public health, safety,
8 or welfare, as follows:

9 a. On or about June 17, 2010, after pleading nolo contendere, Respondent was convicted
10 of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [Driving
11 with a Blood Alcohol Content of .08% or more] in the criminal proceeding entitled *The People of*
12 *the State of California v. Marcela Chambert Klementich* (Super. Ct. Los Angeles County, Case
13 No. 0MB00557). The Court sentenced Respondent to 36 months of probation, standard terms,
14 with a fine of \$390.00 and ordered her to neither possess nor consume alcoholic beverages or
15 controlled substances without a valid prescription. As part of her conviction, Respondent
16 admitted to having a blood alcohol level greater than .15%.

17 b. The circumstances underlying the conviction are that on or about January 14, 2010,
18 Respondent was observed by bystanders and the California Highway Patrol driving erratically on
19 the 101 Ventura Freeway in Los Angeles, California. Subsequently she was arrested and was
20 determined to have a blood alcohol level of .23%.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Conviction Involving Drugs/Alcohol)**

23 13. Respondent is subject to disciplinary action under sections 2761, subdivision (a), and
24 2762, subdivision (c), on the grounds of unprofessional conduct, in that Respondent was
25 convicted of a criminal offense involving alcoholic beverages. Complainant refers to and by this
26 reference incorporates the allegations set forth above in paragraph 12, as though set forth fully
27 herein.

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1 THIRD CAUSE FOR DISCIPLINE

2 (Dangerous Use of Controlled Substances/Alcohol)

3 14. Respondent is subject to disciplinary action under sections 2761, subdivision (a), and
4 2762, subdivision (b), on the grounds of unprofessional conduct, in that Respondent used
5 alcoholic beverages, to an extent or in a manner dangerous or injurious to herself or others to an
6 extent that such use impairs her ability to conduct with safety to the public the practice authorized
7 by his or her license. Complainant refers to and by this reference incorporates the allegations set
8 forth above in paragraph 12, as though set forth fully herein.

9 FIFTH CAUSE FOR DISCIPLINE

10 (Unprofessional Conduct)

11 15. Respondent is subject to disciplinary action under section 2761, subdivisions (a)
12 and/or (d), in that Respondent committed acts of unprofessional conduct, and/or acts violating the
13 Nursing Practice Act. Complainant refers to and by this reference incorporates the allegations
14 set forth above in paragraph 12, as though set forth fully herein.

15 PRAYER

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
17 and that following the hearing, the Board of Registered Nursing issue a decision:

- 18 1. Revoking or suspending Registered Nurse License No. 405857, issued to Marcela
19 Chambert Klementich;
20 2. Ordering Marcela Chambert Klementich to pay the Board the reasonable costs of the
21 investigation and enforcement of this case, pursuant to section 125.3;
22 3. Taking such other and further action as deemed necessary and proper.

23 DATED: 3/4/11

24 *for* LOUISE R. BAILEY, M.ED., RN
25 Executive Officer
26 Board of Registered Nursing
27 Department of Consumer Affairs
28 State of California,
Complainant

DOJ Matter ID: LA2010600946